

112TH CONGRESS
1ST SESSION

S. 1194

To facilitate compliance with Article 36 of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 14, 2011

Mr. LEAHY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To facilitate compliance with Article 36 of the Vienna Convention on Consular Relations, done at Vienna April 24, 1963, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Consular Notification
5 Compliance Act of 2011".

6 **SEC. 2. PURPOSE AND STATEMENT OF AUTHORITY.**

7 (a) **PURPOSE.**—The purpose of this Act is to facili-
8 tate compliance with Article 36 of the Vienna Convention
9 on Consular Relations, done at Vienna April 24, 1963, and

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1 any comparable provision of a bilateral international
2 agreement addressing consular notification and access.

3 (b) STATEMENT OF AUTHORITY.—This Act is en-
4 acted pursuant to authority contained in articles I and VI
5 of the Constitution of the United States.

6 SEC. 3. CONSULAR NOTIFICATION AND ACCESS.

7 (a) IN GENERAL.—As required under, and consistent
8 with, Article 36 of the Vienna Convention on Consular Re-
9 lations, done at Vienna April 24, 1963, and any com-
10 parable provision of a bilateral international agreement
11 addressing consular notification and access, if an indi-
12 vidual who is not a national of the United States is de-
13 tained or arrested by an officer or employee of the Federal
14 Government or a State or local government, the arresting
15 or detaining officer or employee, or other appropriate offi-
16 cer or employee of the Federal Government or a State or
17 local government, shall notify that individual without delay
18 that the individual may request that the consulate of the
19 foreign state of which the individual is a national be noti-
20 fied of the detention or arrest.

21 (b) NOTICE.—

22 (1) IN GENERAL.—The consulate of the foreign
23 state of which an individual detained or arrested is
24 a national shall be notified without delay if the indi-
25 vidual requests consular notification under sub-

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1 section (a), and an appropriate officer or employee
 2 of the Federal Government or a State or local gov-
 3 ernment shall provide any other consular notification
 4 required by an international agreement.

5 (2) FIRST APPEARANCE.—If an appropriate of-
 6 ficer or employee of the Federal Government or a
 7 State or local government has not notified the con-
 8 sulate described in paragraph (1) regarding an indi-
 9 vidual who is detained pending criminal charges and
 10 the individual requests notification or notification is
 11 mandatory under a bilateral international agree-
 12 ment, notification shall occur not later than the first
 13 appearance of the individual before the court with
 14 jurisdiction over the charge.

15 (c) COMMUNICATION AND ACCESS.—An officer or
 16 employee of the Federal Government or a State or local
 17 government (including an officer or employee in charge of
 18 a facility where an individual who is not a national of the
 19 United States is held following detention or arrest) shall
 20 reasonably ensure that the individual detained or arrested
 21 is able to communicate freely with, and be visited by, offi-
 22 cials of the consulate of the foreign state of which the indi-
 23 vidual detained or arrested is a national, consistent with
 24 the obligations described in section 2(a).

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1 (d) NO CAUSE OF ACTION.—Nothing in this section
 2 is intended to create any judicially or administratively en-
 3 forceable right or benefit, substantive or procedural, by
 4 any party against the United States, its departments,
 5 agencies, or other entities, its officers or employees, or any
 6 other person or entity, including, an officer, employee, or
 7 agency of a State or local government.

8 **SEC. 4. PETITION FOR REVIEW.**

9 (a) IN GENERAL.—

10 (1) JURISDICTION.—Notwithstanding any other
 11 provision of law, a Federal court shall have jurisdic-
 12 tion to review the merits of a petition claiming a vio-
 13 lation of Article 36(1) (b) or (c) of the Vienna Con-
 14 vention on Consular Relations, done at Vienna April
 15 24, 1963, or a comparable provision of a bilateral
 16 international agreement addressing consular notifi-
 17 cation and access, filed by an individual convicted
 18 and sentenced to death by any Federal or State
 19 court before the date of enactment of this Act.

20 (2) DATE FOR EXECUTION.—If a date for the
 21 execution of an individual described in paragraph (1)
 22 has been set, the court shall grant a stay of execu-
 23 tion if necessary to allow the court to review a peti-
 24 tion filed under paragraph (1).

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1 (3) STANDARD.—To obtain relief, an individual
 2 described in paragraph (1) shall make a showing of
 3 actual prejudice to the criminal conviction or sen-
 4 tence as a result of the violation. The court may
 5 conduct an evidentiary hearing if necessary to sup-
 6 plement the record and, upon a finding of actual
 7 prejudice, shall order a new trial or sentencing pro-
 8 ceeding.

9 (4) LIMITATIONS.—

10 (A) IN GENERAL.—A petition for review
 11 under this section shall be filed within 1 year
 12 of the later of—

13 (i) the date of enactment of this Act;
 14 (ii) the date on which the Federal or
 15 State court judgment against the indi-
 16 vidual described in paragraph (1) became
 17 final by the conclusion of direct review or
 18 the expiration of the time for seeking such
 19 review; or

20 (iii) the date on which the impediment
 21 to filing a petition created by Federal or
 22 State action in violation of the Constitu-
 23 tion or laws of the United States is re-
 24 moved, if the individual described in para-

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1 graph (1) was prevented from filing by
2 such Federal or State action.

3 (B) TOLLING.—The time during which a
4 properly filed application for State post-convic-
5 tion or other collateral review with respect to
6 the pertinent judgment or claim is pending
7 shall not be counted toward the 1-year period of
8 limitation.

9 (5) HABEAS PETITION.—A petition for review
10 under this section shall be part of the first Federal
11 habeas corpus application or motion for Federal col-
12 lateral relief under chapter 153 of title 28, United
13 States Code, filed by an individual, except that if an
14 individual filed a Federal habeas corpus application
15 or motion for Federal collateral relief before the date
16 of enactment of this Act or if such application is re-
17 quired to be filed before the date that is 1 year after
18 the date of enactment of this Act, such petition for
19 review under this section shall be filed not later than
20 1 year after the enactment date or within the period
21 prescribed by paragraph (4)(A)(iii), whichever is
22 later. No petition filed in conformity with the re-
23 quirements of the preceding sentence shall be consid-
24 ered a second or successive habeas corpus applica-
25 tion or subjected to any bars to relief based on pre-

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1 enactment proceedings other than as specified in
2 paragraph (3).

3 (6) APPEAL.—

4 (A) IN GENERAL.—A final order on a peti-
5 tion for review under paragraph (1) shall be
6 subject to review on appeal by the court of ap-
7 peals for the circuit in which the proceeding is
8 held.

9 (B) APPEAL BY PETITIONER.—An indi-
10 vidual described in paragraph (1) may appeal a
11 final order on a petition for review under para-
12 graph (1) only if a district or circuit judge
13 issues a certificate of appealability. A district
14 judge or circuit judge may issue a certificate of
15 appealability under this subparagraph if the in-
16 dividual has made a substantial showing of ac-
17 tual prejudice to the criminal conviction or sen-
18 tence of the individual as a result of a violation
19 of Article 36(1) of the Vienna Convention on
20 Consular Relations, done at Vienna April 24,
21 1963, or a comparable provision of a bilateral
22 international agreement addressing consular no-
23 tification and access.

24 (b) VIOLATION.—

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1 (1) IN GENERAL.—An individual not covered by
 2 subsection (a) who is arrested, detained, or held for
 3 trial on a charge that would expose the individual to
 4 a capital sentence if convicted may raise a claim of
 5 a violation of Article 36(1)(b) or (c) of the Vienna
 6 Convention on Consular Relations, done at Vienna
 7 April 24, 1963, or of a comparable provision of a bi-
 8 lateral international agreement addressing consular
 9 notification and access, at a reasonable time after
 10 the individual becomes aware of the violation, before
 11 the court with jurisdiction over the charge. Upon a
 12 finding of such a violation—

13 (A) the consulate of the foreign state of
 14 which the individual is a national shall be noti-
 15 fied immediately by the detaining authority,
 16 and consular access to the individual shall be
 17 afforded in accordance with the provisions of
 18 the Vienna Convention on Consular Relations,
 19 done at Vienna April 24, 1963, or the com-
 20 parable provisions of a bilateral international
 21 agreement addressing consular notification and
 22 access; and

23 (B) the court—

24 (i) shall postpone any proceedings to
 25 the extent the court determines necessary

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1 to allow for adequate opportunity for con-
 2 sular access and assistance; and

3 (ii) may enter necessary orders to fa-
 4 cilitate consular access and assistance.

5 (2) EVIDENTIARY HEARINGS.—The court may
 6 conduct evidentiary hearings if necessary to resolve
 7 factual issues.

8 (3) RULE OF CONSTRUCTION.—Nothing in this
 9 subsection shall be construed to create any addi-
 10 tional remedy.

11 **SEC. 5. DEFINITIONS.**

12 In this Act—

13 (1) the term “national of the United States”
 14 has the meaning given that term in section
 15 101(a)(22) of the Immigration and Nationality Act
 16 (8 U.S.C. 1101(a)(22)); and

17 (2) the term “State” means any State of the
 18 United States, the District of Columbia, the Com-
 19 monwealth of Puerto Rico, and any territory or pos-
 20 session of the United States.

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June 03, 2011

The Honorable Patrick J. Leahy
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
U.S. Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Grassley:

As you may know, while on assignment for Current TV my colleague, Laura Ling, and I were arrested by North Korean soldiers for crossing the frozen Tumen river, which separates the Republic of China and North Korea. We were held, as prisoners, isolated from one another, for four and a half months. We were repeatedly interrogated, and eventually put on trial and sentenced to twelve years hard labor. It was only through the extraordinary efforts of the Department of State and former President Bill Clinton that we were pardoned and allowed to return home.

The sense of darkness in the first week in North Korean captivity was unbearable. My biggest fear was nobody knowing where I was or what had happened to me. By the middle of the second week, through the hard work of the Swedish Ambassador pointing out to North Korea its responsibilities under the Vienna Convention, I was able to sit down with him. The Swedish Ambassador represented the interests of the United States in North Korea. It was a very short meeting but the significance of the meeting is hard to describe in words. I can only mention the sense of security I had, knowing that someone other than North Korea was monitoring my case. I believe the prompt consular access protected me from any mistreatment by my captors. Later on I was allowed to meet with him three more times. The meetings were my only communication with the US government and to let them know my situation and for me to find out how my family was doing. I know the importance of having consular access, as demanded by the Vienna Convention on Consular Relations.

The United States has always been on the forefront on human rights issues. People look to the US as a watchdog for human rights violations around the globe. We should not allow the Vienna Convention violation in our backyard. We ask the world to treat our citizens with respect when they are detained in other countries and demand that they have consular access regardless if its our Ambassador or one that represents our interest. We also have to live by those standards.

It is hard to imagine the importance of meeting a friendly face in a place of isolation and darkness until you are in that situation. To know that someone is there monitoring your case and helping to keep you and your family informed of the situation is beyond words. Having consular access has nothing to do with the verdict or sentence of a trial but it is a little light of hope that you have a chance at a fair trial.

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From this very personal experience and point of view, I am writing to urge your full support for legislation that would provide access to judicial review of consular notification violations.

I believe that swift action by Congress to rectify our nation's own consular treaty violations is absolutely essential to prevent the further erosion of this universal safeguard. I also firmly believe that the potential risks of inaction are simply too serious to ignore. For every endangered American hidden in a foreign prison—and for their fearful families back at home—there can be no more important priority than upholding the reciprocal right to consular protection.

Sincerely,



Euna Lee

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